SKINNER RENCE (Representing the Customary Landowners of Part of Nono Customary Land known as Choe Peka) **AND J.P. ENTERPRISES LIMITED –V- RODNEY HIVA AND BEVEN SAMUEL** (Representing Choe Tribe) of Nazareth Village, Marovo, Western Province

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Civil Case No. 232 of 2002

Date of Hearing: 05th February 2003
Date of Ruling: 12th February 2003

Mr J. Apaniai for the 1st and 2nd Plaintiffs
Mr A. Radclyffe for the Defendants

RULING

Kabui, J: The Defendant by Summons filed on 27th January 2003, seeks the following orders-

1. **that the Plaintiffs, their contractors, servants or agents be restrained from entering upon Choe Land, New Georgia, Western Province and from carrying on thereon logging or any operations associated therewith until further order;**

2. **that the Plaintiffs, their contractors, servants or agents remove any logging machinery and equipment from Choe Land forthwith or by such logging machinery and equipment from Choe Land forthwith or by such other date as the parties shall agree.**

3. **that the Second Plaintiff makes or causes to be made an account of all trees of commercial value felled on Choe Land during 2002 and 2003 by species and value and pays or causes to be paid the net proceeds of sale thereof after deduction of reasonable expenses into an interest bearing account to be opened at a commercial bank in the joint names of the parties solicitors.**

4. **such further or other orders as the Court thinks fit.**

5. **that the Plaintiff's pay the Defendant's costs.**

The Background

The 1st Plaintiff applied and obtained a logging licence dated 2nd July 2001 covering Lio/Pondokana and Nono lands on New Georgia in the Western Province. The land areas covered by the licence are consistent with the areas of land specified in the Timber Rights Agreement signed by the 1st and 2nd Plaintiffs on an unspecified date. The 1st and 2nd Plaintiffs filed a Writ of Summons and a Statement of Claim on 10th October 2002 against the Defendants. This claim has arisen because the Defendants and their agents and servants etc. had erected road-blocks across the road being used by the employees of the 2nd Plaintiff. The 2nd Plaintiff had to stop its operation resulting in loss of revenue and damages for trespass. In their defence filed on 8th November 2002, the Defendants counter-claimed to the effect that the 1st and 2nd Plaintiffs had trespassed on Choe land and therefore claimed damages for trespass and other orders. There is a dispute over Choe land between the 1st Plaintiff and the Defendant. The

Defendants' present application is based on their counter-claim. That is, they are the owners of Choe land and they have not given permission for the 1st and 2nd Plaintiffs to enter upon their land as they were not parties to the Timber Rights Agreement signed by the 1st and 2nd Plaintiffs.

Ownership of Choe Land

(a) The Plaintiff's claim

The Plaintiff says that Choe land is part of Nono land and is covered by the 2nd Plaintiff's licence. The Plaintiff relies on two decisions of the Marovo Local Court. The first was dated 24th November 1959. In that case, Chief Iseabangara of Choe was the losing party. The second was dated 27th October 1975. The effect of that decision was that Nono land included the areas claimed by the Pondokana tribe stretching from Ose to Jakili River. At the hearing, these two decisions were challenged by the Defendant as being false ones. The Principal Magistrate at Gizo did not believe that copies of the two decisions were Local Court documents as they did not resemble Court documents. Mr. Milikada filed an affidavit on 4th February 2003 and attached to it one copy ("Exhibit SM1(a)") of the Marovo Local Court decision in 1959 and one copy ("Exhibit SM1(b)" of the other decision in 1975. The Local Court decision in 1959 was against Chief Iseabangara of Choe. The winner was Chief Kevoriche of Nono land. The 1975 decision was that all the land claimed by the Podokana tribe from Ose to Jakili River belonged to the Nono tribe. Choe land was therefore part of Nono land. The Marovo Local Court had been set up in 1954. Its membership up to 1959 had been cancelled in 1960. (See W. P.H.C.Gazette 1960). Its membership in 1960 comprised five members, the President, the Vice-President and three other members. I have not been able to locate the names of the members of that Court up to 1959. In any case, "Exhibit SM1(a)" is only an alleged copy of the Local Court decision in 1959. It is stated as copy obtained from the National Archives in Honiara under the certification of the acting Director Mr. Vari. Section 11(2) of the National Archives Act (Cap. 147) states-

"...A copy or extract from an official record in the National Archives purporting to be examined and certified as true and authentic by the Archivist in that behalf shall be admissible as evidence in any proceedings without further or other proof thereof if the original record would have been admissible as evidence in those proceedings..."

I have noticed that the certification by Mr. Vari on 26th November 2002 does not accurately comply with the language of subsection 2 of section 11 cited above. The certification is simply in these words," This is the true copy of the original document under the reference." This is not confirming that "Exhibit SM1(a)" is a copy or an extract from the official record in the National Archives examined and certified as true and authentic as being a copy or an extract of the original. The identification number of the original record to confirm that the record does exist in the National Archives has not been disclosed. The same documents attached to Mr. Rence's affidavit filed on 10th October 2002 marked "SR1" and "SR2" did not have any certification by the acting Director of the National Archives on them. Why was this omission? Was it an oversight or an indication of the Plaintiff making up something to convince the Court and so certification by the acting Director of the National Archives was necessary? I will find out. Proper certification as provided in section 11(2) above is acceptable only if the original record would have been admissible as evidence. I think in this case, the original record would be a Local Court file in which the ruling of the Local Court is kept and preserved for use. The file, if any, and its content would be admissible as evidence. However, "Exhibit SM19a)" cannot be a copy of the judgment in that file because it is a typed copy. It should have been a properly certified photocopy of the original record to pass as admissible evidence. The truth of the content of "Exhibit SM1(a)" is therefore in doubt. I will not accept it as truly representing the truth of the content of the alleged Local Court decision in 1959. As to the Local Court decision in 1975, the position would

have to be same because "Exhibit SM2(b)" is not a photocopy of the original record but a typed copy which does not represent the true original record. For that reason, the truth of its content is also in doubt. There is however another reason. By Gazette Notice Number 248 of 1970,the members of the Marovo Local Court were Steven Minu, President, Bon Ari, Vice-President, and Langia, Haro,Panhite, Meani, Timothy Koni and Timothy Lianga as members of that Court. The instrument of appointment was dated 31st August 1970. These appointments were revoked by Gazette Notice Number 75 of 1981. Whilst Steven Minu and Meani were members of the Marovo Local Court in 1975, Girilodi was not. When the instrument of appointment in 1970 was cancelled in 1981, Steven Minu was no longer a member of the Court. He might have passed away or resigned. Mr. Giridoli had never been a member of the Court. The quorum for any Local Court is three, one of whom must be the President or the Vice-President. The President and one other member could not form a quorum. The decision in 1975 appears to be without a quorum. There is therefore no evidence upon which to conclude that the Plaintiff and his tribe are the owners in custom of Choe land.

(b) The Defendant's claim

In 1973, an area of land commencing from Panoro Point to Mount Tirua and then to Mount Vinuvinu and then to Mahini Point and to the coast had been the subject of acquisition proceedings according to a public notice dated 25th May 1973. The areas of land within these boundaries were said to be Chale,Choki, Choe, Choekokorapa, Choeulu and Guva. Five trustees had been appointed to represent the people from these areas of land named above. An appeal by a Mr. Ngatulu to be included as a trustee had been dismissed by the acquisition officer. Paragraph 2 of Mr. Hiva's affidavit filed on 8th November 2002 sets out the same boundary lines that appeared in the public notice in 1973. In that affidavit, Mr. Hiva says that the whole area that had been acquired is Choe customary land. He says that within it are six blocks of land named in his affidavit. He says Mohi River divides Nono land and Choe land. It would appear that the then Commissioner of Lands had not been able to implement the agreement made on 25th May 1973 under section 67 of the Land and Titles Act (Cap. 133). The land still remains customary land though its boundaries and the trustees had been identified by the then acquisition officer. However, I do not think that the determination by the acquisition officer was a Local Court decision. It is of course evidence of ownership but that is all its value. It would have been different if title of ownership had been registered though rectification may be raised thereafter if there is a case for such claim. (See **Frazer Patty, Isabel Development Authority (IDA) v. Tikani**, Civil Case No. 197 of 2000 where land acquisition resulted in registration giving an indivisible title to five trustees as title holders). (Also see **Lilo v. Panda** [1980/81] S.I.L.R. 155 later applied in **Hano v Toliole and Another** [1982] S.I.L.R 58 where it was said that an incomplete acquisition process was no bar to the Local Court exercising its jurisdiction. Chiefs as a forum at first instance created by an amendment in 1985 would I think be no different from the Local Court in terms of exercising its jurisdiction following any incomplete acquisition process such as in this case). I do not therefore think that the Defendant can claim exclusive ownership as against the opposing claim by the Plaintiff on the basis of the apparent inconclusive land acquisition process.

Is there a dispute between the parties?

The answer is yes. The dispute is that whilst the Plaintiff says Choe land is part of Nono land, the Defendants say this is not so because the common boundary between Nono land and Choe land is the Mohi River. The Defendants say Choe land has been incorrectly included as part of Nono land. So there is a dispute about what should be the correct boundary between the two. The Marovo Council of Chiefs heard a dispute between Mr. Letipiko Balesi and Messrs Kamasae and Ringi who claimed to own Mbuti land allegedly covered by Nono land. The Chiefs heard the dispute and gave its decision on 23rd

December 2002 in favour of Letipiko Balesi. (See Exhibit SM1(d) attached to Silas Milikada's affidavit cited above.). The Chiefs' decision was based on the decisions of the Marovo Local Court in 1959 and 1975 respectively. The parties to this case were not cited in that case before the Chiefs. I do not think the Chiefs have decided the apparent dispute over the boundary between Nono land and Choe land in this case. This dispute should go back to the Chiefs for a determination in the first place. As usual in this jurisdiction, such a dispute is a matter for the customary land tribunals to determine and not the High Court. The dispute has not been referred to the Chiefs as yet and so I am unable to consider the application for an injunction in aid of the Chiefs. The Defendants' application is therefore refused. The parties will meet their own costs. I order accordingly.

F. O. Kabui
Judge